



DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2022-0035]

Qualification of Drivers; Exemption Applications; Hearing

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt 18 individuals from the hearing requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) to operate a commercial motor vehicle (CMV) in interstate commerce. The exemptions enable these hard of hearing and deaf individuals to operate CMVs in interstate commerce.

DATES: The exemptions were applicable on December 22, 2022. The exemptions expire on December 22, 2024.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, FMCSA, DOT, 1200 New Jersey Avenue SE, Room W64-224, Washington, DC 20590-0001, (202) 366-4001, fmcsamedical@dot.gov. Office hours are from 8:30 a.m. to 5 p.m. ET Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Dockets Operations, (202) 366-9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Viewing Comments

To view comments, go to www.regulations.gov. Insert the docket number (FMCSA-2022-0035) in the keyword box and click “Search.” Next, sort the results by “Posted (Newer-Older),” choose the first notice listed, and click “Browse Comments.” If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590-0001, between 9 a.m. and 5 p.m. ET Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Dockets Operations.

B. Privacy Act

In accordance with 49 U.S.C. 31315(b)(6), DOT solicits comments from the public on the exemption requests. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov. As described in the system of records notice DOT/ALL 14 (Federal Docket Management System (FDMS)), which can be reviewed at <https://www.transportation.gov/individuals/privacy/privacy-act-system-records-notice>, the comments are searchable by the name of the submitter.

II. Background

On August 17, 2022, FMCSA published a notice announcing receipt of applications from 18 individuals requesting an exemption from the hearing requirement in 49 CFR 391.41(b)(11) to operate a CMV in interstate commerce and requested comments from the public (87 FR 50690). The public comment period ended on September 16, 2022, and three comments were received.

FMCSA has evaluated the eligibility of these applicants and determined that granting exemptions to these individuals would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved by complying with § 391.41(b)(11).

The physical qualification standard for drivers regarding hearing found in § 391.41(b)(11) states that a person is physically qualified to drive a CMV if that person first perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5—1951.

This standard was adopted in 1970 and was revised in 1971 to allow drivers to be qualified under this standard while wearing a hearing aid (35 FR 6458, 6463 (Apr. 22, 1970) and 36 FR 12857 (July 8, 1971), respectively).

III. Discussion of Comments

FMCSA received three comments in this proceeding. One commenter stated that Mr. Hagop Balian's name was spelled incorrectly in the notice published on August 17, 2022 (87 FR 50690). The spelling of Mr. Balian's name has been corrected in this notice exempting him from the hearing standard in § 391.41(b)(11).

The Commercial Vehicle Training Association's (CVTA) comment did not address any of the applications before the Agency in docket number FMCSA-2022-0035. Instead, CVTA stated that "without a comprehensive understanding of the Agency's reasoning behind providing certain exemptions and additional research on the subject, our members are not able to provide a consistent standard without sacrificing safety or opening themselves up to liability."

CVTA also stated that “not enough research has been made available to the public on this matter and the Agency has not been transparent with their standards of how exemptions are granted or extended.” It requested additional research, public data, and guidance on this matter. CVTA noted that the Agency’s recent decisions to renew some exemptions “were based ‘on their merits.’” CVTA continued that in “order for an agency’s assessment to not run afoul of the ‘arbitrary and capricious’ standard for judicial review set forth by the Administrative Procedure Act (APA), the Agency must engage in reasoned decision making by examining the relevant data and articulating a satisfactory explanation for its action. Further, there must be a rational connection between the facts found and the choice made. CVTA does not believe that FMCSA has satisfied this standard.”

CVTA also stated that “FMCSA provided little to no relevant data other than noting that they ‘searched for crash and violation data’ and ‘driving records from the State Driver’s Licensing Agency’ when making the decision.” CVTA continued that it understood this database has never been a factor in determining whether a hearing-impaired commercial driver’s license (CDL) driver meets the medical fitness examination required by the FMSCRs to operate a CMV. CVTA stated that the “Agency did not articulate a satisfactory explanation of why this data was relevant when determining if this exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.”

In addition, CVTA stated that it “does not feel the statutory requirements have been met by the extension of these exemptions, there has been a lack of transparency in the decision making, and the regulation has not been articulated in a way that can produce a reliable and consistent standard our members can rely on when making accommodations.” Finally, CVTA stated it “cannot support this rule without additional

research, data, and an articulated explanation on the subject that can be consistently employed throughout the industry.”

The last comment received on the August 17, 2022, notice opposes CVTA’s comment and supports the issuance of the exemptions.

FMCSA Response

CVTA in essence is renewing the global comments relating to the standards and bases FMCSA uses in determining whether to grant exemptions from the hearing standards that it provided on October 21, 2015, in response to a Federal Register notice announcing applications for exemptions from the hearing requirement in the FMCSRs. FMCSA has already responded to and addressed those comments in a Federal Register notice on December 29, 2017 (82 FR 61809). FMCSA has no basis for reconsidering its treatment of the matters raised previously by CVTA.

FMCSA acknowledges CVTA’s concerns about the challenges driver training schools may experience delivering services for hearing impaired drivers. The Agency’s decision regarding exemption applications is based on relevant medical information and literature indicating whether a licensed driver with the medical condition could operate safely, as well as the specific bases discussed in the December 2017 *Federal Register* notice (82 FR 61809). FMCSA also considers its experience with hearing exemption holders. The information obtained from each applicant’s driving record provides the Agency with details regarding any moving violations or reported crash data, which demonstrates whether the driver has a safe driving history and is used as an indicator of future driving performance. This information assists the Agency in determining whether these drivers pose a risk to public safety and if granting these exemptions would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.

CVTA has not provided any data showing that drivers who are hard of hearing or deaf are at increased crash risk. The Agency's decision to exercise its discretion and grant the exemptions is not arbitrary or capricious nor does it fail to meet the statutory standard. Therefore, the Agency will continue to consider each application for a hearing exemption on an individual basis and will continue exempting those drivers who do not pose a risk to public safety when granting the exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.

In granting these exemptions, FMCSA focuses on whether these individuals can safely operate a CMV in interstate commerce. Matters concerning the training of deaf or hard of hearing individuals to operate CMVs are beyond the scope of the medical exemptions being granted and are not evidence that FMCSA should no longer grant exemptions from its hearing standard. FMCSA notes there are CDL training schools that have successfully trained deaf and hard of hearing drivers and State driver's licensing agencies have found ways to conduct CDL skills tests for such individuals. FMCSA believes that it is not necessary for FMCSA to "provide a consistent standard" for training and testing activities when considering an application for an exemption from the hearing standard.

IV. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statutes allow the Agency to renew exemptions at the end of the 5-year period. However, FMCSA grants medical exemptions from the

FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The Agency's decision regarding these exemption applications is based on relevant medical information and literature, and the 2008 Evidence Report, "Executive Summary on Hearing, Vestibular Function and Commercial Motor Driving Safety." The evidence report reached two conclusions regarding the matter of hearing loss and CMV driver safety: (1) no studies that examined the relationship between hearing loss and crash risk exclusively among CMV drivers were identified; and (2) evidence from studies of the private driver's license holder population does not support the contention that individuals with hearing impairment are at an increased risk for a crash. In addition, the Agency reviewed each applicant's driving record found in the Commercial Driver's License Information System, for CDL holders, and inspections recorded in the Motor Carrier Management Information System. For non-CDL holders, the Agency reviewed the driving records from the State Driver's Licensing Agency. Each applicant's record demonstrated a safe driving history. Based on an individual assessment of each applicant that focused on whether an equal or greater level of safety would likely be achieved by permitting each of these drivers to drive in interstate commerce, the Agency finds the drivers granted this exemption have demonstrated that they do not pose a risk to public safety. Consequently, FMCSA finds further that in each case exempting these applicants from the hearing standard in § 391.41(b)(11) would likely achieve a level of safety that is equal to that existing without the exemption, consistent with the applicable standard in 49 U.S.C. 31315(b)(1).

V. Conditions and Requirements

The terms and conditions of the exemption are provided to the applicants in the exemption document and include the following: (1) each driver must report any crashes or accidents as defined in § 390.5T; (2) each driver must report all citations and

convictions for disqualifying offenses under 49 CFR parts 383 and 391 to FMCSA; and

(3) each driver is prohibited from operating a motorcoach or bus with passengers in interstate commerce. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official. In addition, the exemption does not exempt the individual from meeting the applicable CDL testing requirements.

VI. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

VII. Conclusion

Based upon its evaluation of the 18 exemption applications, FMCSA exempts the following drivers from the hearing standard in § 391.41(b)(11), subject to the requirements cited above:

Stephen Arellano (CO)	Hagop Balian (MD)
Michael Clark (MD)	Jeremy Earl (IL)
James Hall (MS)	Arnold Heyen (NE)
Omar Ibrahim (MN)	Majuong Kojza (CO)
Peter Mannella (WA)	Jay Manns (PA)
Matthew Moyer (PA)	Ismail Muse (UT)
Dax Nutt (TX)	Michael Piirainen (ME)
Jeremy Stockman (KS)	Zander Symansky (KS)
Dalton Taylor (OK)	Jorge Toledo (FL)

In accordance with 49 U.S.C. 31315(b), each exemption will be valid for 2 years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) the person fails to comply with the terms and conditions of

the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136, 49 U.S.C. chapter 313, or the FMCSRs.

Larry W. Minor,
Associate Administrator for Policy.

[FR Doc. 2022-28282 Filed: 12/28/2022 8:45 am; Publication Date: 12/29/2022]